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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JUL 26 2004
JAMES H. LARSEN, CLERK
DEPUTY
SPOKANE, WASHINGTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON AT SPOKANE

DANIEL T. REINER,

Plaintiff,

v.

KEN BAGDASARIAN and JANE DOE
BAGDASARIAN and the marital
community thereof; WHEEL
FINISHING SYSTEMS, LLC, a
California Limited Liability Company;
and UNITED FINISHING SYSTEMS,
INC., a California corporation,

Defendants.

No. CV-04-0153 LRS

DEFENDANTS' FIRST
AMENDED ANSWER,
AFFIRMATIVE DEFENSES AND
COUNTERCLAIMS

Defendants, KEN BAGDASARIAN, VICTORIA BAGDASARIAN, WHEEL
FINISHING SYSTEMS, LLC and UNITED FINISHING SYSTEMS, INC., answer
Plaintiff's Complaint as follows:

1 1. Defendants are without sufficient knowledge as to the truth or falsity of
2 this statement and, therefore, deny same.

3 2. Defendants admit the first sentence of this paragraph. Defendants deny
4 the second sentence as not all of the named Defendants were either founders or
5 officers of Wheel Finishing Systems, LLC and/or United Finishing Systems, Inc.
6 Defendants admit that Wheel Finishing Systems, LLC is a California Limited
7 Liability Company and that United Finishing Systems, Inc. is a California
8 Corporation. The last sentence of this paragraph is denied.

9 3. Defendants deny that they physically transacted business or committed
10 any tortious acts in Washington (or elsewhere, for that matter).

11 4. Defendants admit that Ken Bagdasarian is the inventor and patent owner
12 of a machine that finishes aluminum wheels by an automated process, rather than by
13 manual labor. Defendants also admit that, beginning in the spring of 2003 and
14 continuing to date, Mr. Bagdasarian has been looking for suitable investors in a
15 company to bring his invention to market.

16 5. Defendants deny the averments of Paragraph 5 of the complaint, which
17 purport to set forth the facts regarding Reiner's delivery to Mr. Bagdasarian of the
18 check attached to the Complaint, as each averment therein is materially false and/or
19 misleading.

20 6. Defendants deny paragraph 6 of the Complaint.

21 7. Defendants are without knowledge as to the truth or falsity of the first
22 sentence of paragraph 7 of the Complaint, and, therefore, deny same. The second
23 sentence is denied. The third sentence is admitted. The fourth sentence is admitted
24 except for the portion that states that Bagdasarian would call in a "few" days with an
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1 answer. The fifth sentence is admitted. The sixth sentence is denied insofar as it
2 suggests that Bagdasarian was legally obligated to return any money to Reiner.

3 8. Defendants deny paragraph 8 of the Complaint.

4 9. Defendants admit that Mr. Bagdasarian deposited the check on August
5 19, 2003, but deny all other averments of this paragraph.

6 10. Defendants deny paragraph 10 of the Complaint.

7 11. Defendants deny paragraph 11 of the Complaint.

8 12. Defendants deny paragraph 12 of the Complaint.

9 13. Defendants deny paragraph 13 of the Complaint.

10 **AFFIRMATIVE AVERMENTS OF FACT**

11 1. As previously averred, Mr. Bagdasarian invented and owns the patent on a
12 machine that polishes aluminum wheels. Presently, aluminum wheels are typically
13 polished by manual labor, primarily in Mexico or China. Mr. Bagdasarian's invention
14 eliminates the need for that backbreaking, dirty and unhealthy work, greatly reducing
15 transportation and labor costs while improving the finished product by eliminating the
16 random variations attendant to manual polishing. Mr. Bagdasarian's invention
17 revolutionizes the wheel polishing process and has no substantial effective
18 competition.

19 2. Mr. Bagdasarian's first patent on the wheel finishing machine was issued
20 April 2, 2002. By the end of 2002 Mr. Bagdasarian had built and successfully tested a
21 prototype of the machine.

22 3. In early 2003 Mr. Bagdasarian began looking for investors to fund the start-
23 up costs of a new business to bring his invention to market, which he estimated at \$3
24 million over the first three years. Mr. Bagdasarian began working with Mr. Jeff
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1 Spain, a former investment banker with experience in finding venture capital for start-
2 up companies. In the Spring of 2003 Mr. Spain assisted Mr. Bagdasarian to prepare a
3 "white paper" and confidential private placement memorandum on "Wheel Finishing
4 Systems, LLC," the company they planned to form in order to commercialize the
5 patented wheel finishing machine.

6 4. By July 2003 Mr. Spain and Mr. Bagdasarian had secured "hard" investment
7 commitments for \$2 of the \$3 million dollars Mr. Bagdasarian estimated would be
8 needed to start Wheel Finishing Systems, including \$1 million from Mike Bowlin and
9 his son. Mr. Bowlin is the former Chairman and CEO of Arco, and has substantial
10 experience in the retail wheel industry.

11 5. In early July 2003 Mr. Spain contacted Mr. Eric Johnson about the
12 investment opportunity in Wheel Finishing Systems. Upon Mr. Bagdasarian's
13 information and belief, Mr. Spain and Mr. Johnson were each affiliated at the time
14 with The Victory Group, a venture capital company in which Reiner holds an interest.
15 Mr. Johnson was excited about the project, and told Spain to contact Reiner about the
16 opportunity.

17 6. In mid-July 2003 Mr. Spain approached Reiner about investing in Wheel
18 Finishing Systems, LLC. Mr. Spain advised Reiner about the terms they had reached
19 with Mr. Bowlin and his son, and invited Reiner to meet with Mr. Bagdasarian about
20 participating as an additional investor in Mr. Bagdasarian's company.

21 7. Reiner came to Los Angeles and met with Mr. Bagdasarian about his
22 invention and proposed business model at the offices of The Victory-Group in San
23 Pedro, California, on Friday, July 25, 2003. At that meeting Reiner professed
24 disinterest in the opportunity, saying that he did not like the proposed business model.
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1 8. Although he had said he was not interested in Wheel Finishing Systems
2 Reiner continued to communicate with Mr. Spain about investing in the company.
3 However, Reiner was not interested in merely a portion of the investment opportunity.
4 Instead, Reiner wanted to fund all of the company's financing requirements, and
5 wanted substantial control over the company's operations. Mr. Spain told Reiner that
6 Mr. Bagdasarian did not want to "kick out" the Bowlins and other investors who had
7 already made firm financing commitments to the company, but suggested that Reiner
8 could probably still obtain a 2 million dollar position in the company.

9 9 On or about July 30, 2003, Reiner called Mr. Bagdasarian directly and asked
10 Mr. Bagdasarian to come to Reiner's estate outside Newport, Washington, for a
11 "private" meeting to consider Reiner's proposal for funding Wheel Finishing Systems.
12 Although Mr. Spain warned against it, Mr. Bagdasarian agreed to come to
13 Washington and hear Mr. Reiner's proposal. At this time Mr. Reiner knew that all the
14 terms of the deal with the Bowlins had been heavily negotiated over several months
15 and was now agreed upon; that extensive paperwork had been prepared and completed
16 by the parties; that this paperwork had been reviewed and approved by the parties and
17 their attorneys; and that the execution of this paperwork, including a binding written
18 agreement, was imminent.

19 10. On August 4, 2003, Mr. Bagdasarian traveled to Reiner's 2200 acre estate
20 near Newport in order to hear Mr. Reiner's proposal. On the first day Reiner showed
21 Mr. Bagdasarian a window manufacturing plant, in which he was a partner, then his
22 private lake and the work being done on his new 50,000 square foot house. Mr.
23 Bagdasarian stayed that night in the guest house at the estate. The next day Reiner
24 presented his proposal to provide *all* of the financing necessary to capitalize Wheel
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1 Finishing Systems, to the exclusion of the Bowlins and other investors from whom
2 Mr. Bagdasarian already had hard commitments. When Mr. Bagdasarian expressed
3 reservations about losing the Bowlins' contribution to the company's financing
4 needs, Reiner bragged that he was "worth more than 100 million dollars," and told
5 Mr. Bagdasarian that he could "write a check" for *six* million dollars if needed, instead
6 of the three million dollars Mr. Bagdasarian had estimated would be necessary to
7 bring the company to a positive cash flow position. Reiner also told Mr. Bagdasarian
8 that Reiner could have the financing deal done in "five days," but that the funding
9 through Mr. Bagdasarian's other investors would take "two months."

10 11. The material terms of Reiner's proposal were as follows:

11 (a) The two men would commercialize Mr. Bagdasarian's invention
12 through his existing company Wheel Finishing Systems, LLC ("WFS"). WFS
13 would immediately rent commercial space in Los Angeles and have the
14 prototype machine transferred to that location;

15 (b) Mr. Bagdasarian and Reiner would own fifty-five percent and forty-
16 five percent of WFS, respectively, through separate LLCs that they would form
17 to hold their interests. Mr. Bagdasarian would be able to sell interests in his
18 LLC to certain named individuals, including Michael Schnieder and Greg
19 Karapetian, and would obtain releases from other individuals who might claim
20 an interest in WFS;

21 (c) As his contribution to WFS, Reiner would immediately provide
22 \$2,000,000 to WFS -- \$150,000 in equity and \$1,850,000 as a loan -- although
23 Reiner understood and agreed that the new company would need more money
24 than that over the next four years. In fact, Reiner undertook the responsibility
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1 to lead in obtaining that additional needed capital.

2 (d) As his contribution to WFS, Bagdasarian would transfer all patents,
3 know-how or other intellectual property owned by him and UFS to WFS.

4 (e) Bagdasarian would be paid a salary of \$20,000 per month for his
5 work for the company, beginning immediately, while Reiner would be paid
6 nothing.

7 12. Mr. Bagdasarian asked for time to consider Reiner's proposal, and
8 expressed reservations about abandoning the other investors from whom he already
9 had hard commitments. In response, and in order to induce Mr. Bagdasarian to accept
10 his proposal, Reiner produced a checkbook and wrote a check to Wheel Finishing
11 Systems in the amount of \$150,000. Reiner presented the check to Mr. Bagdasarian
12 as Reiner's "equity" investment in the company, and explained that he wanted Mr.
13 Bagdasarian to take the check and have the funds in order to get the business plan
14 going forward immediately. Reiner knew that Mr. Bagdasarian had invested a lot of
15 his personal capital in the invention and needed money both to get the business going
16 and to pay his own living expenses. Reiner told Mr. Bagdasarian that he was
17 providing the funds immediately in order to show his "good faith" and his
18 "commitment" to the agreement.

19 13. Shortly before Mr. Bagdasarian was to leave for the airport Reiner
20 suggested that they should record the terms of their agreement in a written
21 Memorandum of Understanding (MOU). Reiner prepared the MOU, a true and
22 correct copy of which is attached hereto as Exhibit A and incorporated herein by
23 reference.

24 14. In reliance upon Reiner's representations and the parties' agreement as
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1 reflected in the written MOU Mr. Bagdasarian returned home, advised Mr. Spain to
2 terminate discussions with the other investors in Wheel Finishing Systems, and began
3 performing under the agreement. Mr. Bagdasarian obtained releases from the other
4 individuals who had a prospective interest in Wheel Finishing Systems, provided
5 documentation as requested by Reiner, and searched to locate a building for the new
6 company.

7 15. On August 15, 2003, Reiner came to Mr. Bagdasarian's offices in
8 California to discuss the documents needed to implement performance of the parties'
9 agreement. Mr. Bagdasarian's partner Mike Thomas was also present at this meeting.
10 At this meeting Reiner expressed dismay that Mr. Bagdasarian had not yet deposited
11 the check and begun securing manufacturing space, purchasing equipment, and
12 otherwise "get going." Mr. Reiner implored Mr. Bagdasarian to do so as soon as
13 possible, lest some "competition" get the jump on Wheel Finishing Systems.

14 16. On August 18, 2003, in accordance with the language of the MOU, Reiner
15 presented Mr. Bagdasarian with a second draft of the MOU prepared by Reiner and
16 his attorney, Scott Smith of Paine, Hamblen, Coffin, Brooke & Miller LLP. Mr.
17 Bagdasarian signed the revised MOU that evening and returned it to Reiner by
18 facsimile the next morning. A true and correct copy of the revised MOU is attached
19 hereto as Exhibit B and is incorporated herein by reference. After signing and
20 returning the written agreement, and in reliance upon Reiner's statements and
21 representations consistent therewith, Mr. Bagdasarian opened a bank account and
22 deposited Reiner's check into Wheel Finishing System's account.

23 17. Mr. Bagdasarian continued to perform under the parties' agreement. He
24 created his new LLC, stopped the day to day operation of UFS, began tearing down
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1 equipment and packing supplies and materials in preparation for moving the
2 company's premises, located property for the new company, obtained releases from
3 other individuals with claims to an interest in Wheel Finishing Systems, and provided
4 Reiner documentation pursuant to the agreement. In accordance with the paragraph
5 11 of the MOU, Mr. Bagdasarian also reached agreements to sell membership
6 interests in his new LLC with Michael Schneider and Greg Karapetian for a total
7 expectancy to him of \$1,000,000.

8 18. Although Reiner and Mr. Bagdasarian had agreed that time was of the
9 essence and expressly undertook to expedite execution of documents to move the
10 business forward— a term upon which Reiner knew Mr. Bagdasarian had relied in
11 accepting Reiner's proposal in lieu of the other financing he had previously arranged -
12 - Reiner failed to perform as promised.

13 19. Ultimately, Reiner presented Mr. Bagdasarian with documents that did not
14 require Reiner to find or provide additional financing as the parties had agreed, and
15 which would have allowed Reiner to foreclose on Mr. Bagdasarian's patent if Wheel
16 Finishing Systems was unable to repay the initial \$1,850,000 debt financing within
17 three years, even if the company was doing well. Mr. Bagdasarian objected to these
18 documents as inconsistent with the parties' actual agreement and express
19 understanding that the company would likely need at least three million dollars over
20 the first three or four years, and that Reiner would have responsibility to find or
21 provide that additional capital. In response to Mr. Bagdasarian's objections, Reiner
22 admitted that the documents provided did not comport with the parties' original intent
23 and agreement, as reflected by the MOU. Nonetheless, over the next several weeks,
24 Reiner failed and refused to provide documents that *did* comport with the parties'
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1 actual agreement.

2 20. Ultimately, yet *another* month passed, and it became clear to Mr.
3 Bagdasarian that Reiner had no intention of performing in accordance with the terms
4 of their agreement. Although the parties had expressly agreed that the new company
5 would require more than \$2,000,000 to successfully start-up, and that Reiner had
6 responsibility to obtain or provide such additional capital, Reiner refused to
7 incorporate language reflecting that agreement in the written documents.

8 21. On October 3, 2003, Mr. Bagdasarian notified Reiner that Mr. Bagdasarian
9 would no longer negotiate Reiner's attempt to change the terms of the parties'
10 agreement. Reiner knew that Mr. Bagdasarian has cashed the check for Reiner's
11 equity investment in Wheel Finishing Services. Nonetheless, Reiner never responded
12 to Mr. Bagdasarian's notice of breach, and never attempted to cure his breach of the
13 parties' agreement or to ameliorate the injury and damages Mr. Bagdasarian had
14 sustained as a consequence of his breach.

15 22. On February 11, 2004, Reiner called Mr. Bagdasarian and falsely asserted
16 that he did not know that Mr. Bagdasarian had cashed the \$150,000 check Reiner had
17 delivered six months earlier. Mr. Bagdasarian was stunned by Reiner's untruth. Mr.
18 Bagdasarian had no plan to repay the money, as Reiner had suddenly demanded,
19 because Reiner's payment had been made as an equity investment in Wheel Finishing
20 Systems, rather than as a loan. Mr. Bagdasarian advised Reiner as much in the email
21 referenced by Reiner's complaint in this action.

22 **AFFIRMATIVE DEFENSES**

- 23 1. Plaintiff has failed to state a claim upon which relief can be granted.
24 2. Reiner's claim for breach of contract is barred by his own anticipatory
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1 breach.

2 3. Reiner is equitably estopped to assert claims for breach of contract,
3 conversion or unjust enrichment against Mr. Bagdasarian.

4 4. Reiner's damages, if any, have been proximately caused by his own acts
5 and failures to act.
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COUNTERCLAIMS

1. Breach of Contract. Reiner breached the parties' contract by failing and refusing to perform in accordance therewith. As a direct and known consequence of Reiner's breach, Mr. Bagdasarian has suffered over one million dollars in damages from his lost expectancy interest, together with additional damages in amounts spent pursuant to the contract in an amount to be proved at trial, loss of business in UFS, and lost wages in an amount to be proved at trial.

2. Promissory Estoppel. Reiner made promises and representations that he would perform specific acts regarding the financing of Wheel Finishing Systems, knowing and intending that Mr. Bagdasarian would rely thereon. Mr. Bagdasarian did rely on Reiner's promises and representations, and reasonably so. Reiner failed to act and perform as he had promised and represented he would. Reiner's failure to act in accordance with the promises and representations he made, and upon which he knew Mr. Bagdasarian was relying, has proximately caused Mr. Bagdasarian damages in an amount to be proved at trial, but known to exceed \$150,000.

PRAYER FOR RELIEF

WHEREFORE, Defendants and Counterclaimants pray for judgment against Reiner as follows:

- A. That Plaintiff take nothing by way of his Complaint;
- B. That Mr. Bagdasarian be awarded damages against Reiner in an amount to be proved at trial, but which is known to exceed \$1,150,000;

1 C. For any further relief as this court deems equitable and just.

2
3 DATED this 14th day of July, 2004.

4 PRESTON GATES & ELLIS LLP

5
6 By

7 John R. Nelson, WSBA # 16393
8 J. Michael Keyes, WSBA # 29215
9 Attorneys for Defendants

10
11 **VERIFICATION**

12 Ken Bagdasarian does hereby declare under penalty of perjury according to the
13 laws of the United States that he has read the foregoing Answer, Affirmative Defenses
14 and Counterclaims, has personal knowledge of the facts averred therein, and knows
15 them to be true and accurate as stated.

16 Dated this _____ day of July, 2004, at _____, California.

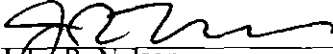
17 _____
18 Levon Kenneth Bagdasarian
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1 C. For any further relief as this court deems equitable and just.

2 DATED this 14th day of July, 2004.

3 PRESTON GATES & ELLIS LLP

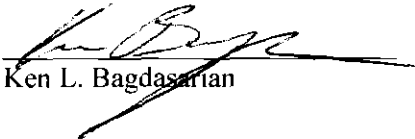
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5 By

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7 John R. Nelson, WSBA # 16393
8 J. Michael Keyes, WSBA # 29215
9 Attorneys for Defendants

10 **VERIFICATION**

11 Ken Bagdasarian does hereby declare under penalty of perjury according to the
12 laws of the United States that he has read the foregoing Answer, Affirmative Defenses
13 and Counterclaims, has personal knowledge of the facts averred therein, and knows
14 them to be true and accurate as stated.

15 Dated this 21 day of July, 2004, at Whittier, California.

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17 Ken L. Bagdasarian
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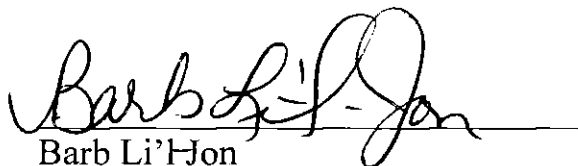
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CERTIFICATE OF SERVICE

I hereby declare, under penalty of perjury under the laws of the State of Washington, that on this 26 day of July, 2004, I caused a true and correct copy of the foregoing ANSWER, AFFIRMATIVE DEFENSES & COUNTERCLAIMS to be sent to the following counsel:

William Schroeder
Gregory S. Johnson
Paine Hamblen Coffin Brooke & Miller LLP
717 West Sprague Avenue, Suite 1200
Spokane, WA 99201

- ☐ via facsimile
- ☐ via overnight courier
- ☐ via first-class U.S. mail
- ☒ via hand delivery


Barb Li'Jon